

EXHIBIT 3

Cruse, William R.

From: Cruse, William R.
Sent: Friday, June 30, 2023 11:34 AM
To: Nolan, Michael
Cc: Hudson, Danielle C.
Subject: RE: Shelly Subpoena in Pace-O-Matic v. Eckert Seamans

Mike,

Thank you for your time this morning. As stated, we will be filing a motion to quash before the noticed deposition date of Saturday, July 15, which, again, is the day after Mr. Shelly returns from vacation and, as stated below, does not even provide him a day beforehand to meet with counsel. Accordingly, Mr. Shelly will not be appearing on that date. As we will develop in our letter motion and as my questions made clear on our call, we believe your subpoena to be unduly burdensome and harassing to a nonparty. We also are troubled by your refusal to provide in advance the right to protect information we deem as competitively sensitive as "For Attorney's Eyes Only," subject to the same dispute resolution procedures in the parties' protective order. We understand you disagree with these points, hence the need for briefing and judicial intervention. If the Court decides a deposition is appropriate, either as a whole or subject to limitations, we can discuss new dates then.

William R. Cruse | BLANKROME

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From: Cruse, William R.
Sent: Wednesday, June 28, 2023 6:32 PM
To: Nolan, Michael <Michael.Nolan@huschblackwell.com>
Subject: Re: Shelly Subpoena in Pace-O-Matic v. Eckert Seamans

Mike,

So you want him to sit for deposition the day after he gets back from vacation with not even a day to meet with counsel to prepare, assuming you and I can reach agreement that your request for his deposition is even proper? That's not reasonable. Why don't you leave the Form AO88 alone until we talk? I gave you the dates Mr. Shelly is unavailable in July after all. (I don't know what exclusionary dates are, to be honest.)

Talk with you Friday.

Sent from my iPhone

On Jun 28, 2023, at 6:15 PM, Nolan, Michael <Michael.Nolan@huschblackwell.com> wrote:

In an attempt to work around your exclusionary dates, attached please find a Second Amended Notice of Deposition resetting it for July 15. Per your request, a copy of the protective order is also attached.

Michael Nolan
Partner
Direct: 314-480-1770
Michael.Nolan@huschblackwell.com

From: Cruse, William R. <william.cruse@blankrome.com>
Sent: Wednesday, June 28, 2023 4:32 PM
To: Nolan, Michael <Michael.Nolan@huschblackwell.com>
Subject: RE: Shelly Subpoena in Pace-O-Matic v. Eckert Seamans

[EXTERNAL EMAIL]

Mike,

I just forwarded our chain to my client with your most recent subpoena. He informs that he is away on vacation July 1-14 and is also away July 19-21. So, if you would like to send another subpoena with another arbitrary date of your choosing that fits his schedule, please do so. My reservations, as stated below, remain the same.

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From: Cruse, William R.
Sent: Wednesday, June 28, 2023 5:19 PM
To: Nolan, Michael <Michael.Nolan@huschblackwell.com>
Subject: RE: Shelly Subpoena in Pace-O-Matic v. Eckert Seamans

Mike,

I'm open after 11 a.m. Eastern on Friday. As for your subpoena, we can discuss your arbitrary date. If we have open issues with what you are attempting to do or do not feel we have had adequate time to prepare, we will move to quash. This is a fascinating fact discovery strategy. Mr. Shelly appears to have less rights to being prepared for deposition and scheduling his deposition than the parties. What are the dates of the party depositions over the next 2 months? Also, can you send me a PO if it exists?

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From: Nolan, Michael <Michael.Nolan@huschblackwell.com>
Sent: Wednesday, June 28, 2023 5:13 PM
To: Cruse, William R. <william.cruse@blankrome.com>
Cc: Jensen, Jeff <Jeff.Jensen@huschblackwell.com>; Martinich-Sauter, Michael <Michael.Martinich-Sauter@huschblackwell.com>; Ottolini, Lisa <Lisa.Ottolini@huschblackwell.com>; Adeniran, Bola <Bola.Adeniran@huschblackwell.com>; May-Matthews, Christy <Christy.May-Matthews@huschblackwell.com>
Subject: RE: Shelly Subpoena in Pace-O-Matic v. Eckert Seamans

Apparently, we had a few e-mails cross paths. I was hoping to discuss with you before Friday, but if that is the earliest you are available, I will plan on calling your office Friday morning at 9 a.m. Eastern.

Although I have repeatedly asked you for alternate dates to reset Mr. Shelly's deposition, you have refused to offer any, instead, only stating that you will endeavor to "determine the appropriateness of Mr. Shelly's deposition, and then, if appropriate, set a date after we have had time to adequately prepare him." That is unacceptable.

Given the fact that you finally advised that July 6 and 7 will not work, and in order to accommodate your schedules and give you and Mr. Shelly ample time to prepare, I have re-noticed his deposition for July 13, a full month from the date he was served with the subpoena. Please see attached.

I look forward to talking with you on Friday.

Michael Nolan
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From: Cruse, William R. <william.cruse@blankrome.com>
Sent: Wednesday, June 28, 2023 3:45 PM
To: Nolan, Michael <Michael.Nolan@huschblackwell.com>
Subject: RE: Shelly Subpoena in Pace-O-Matic v. Eckert Seamans

[EXTERNAL EMAIL]

Mike,

I am jammed until Friday (and I have asked for a Friday conference several times). I don't know what more to tell you that I have not already stated. I have offered to **schedule** a call with you, to discuss issues with you, and so on. I have said that we will get the deposition done during your discovery period, if we determine the deposition is appropriate either without limitation or with limitation. (You have not even told me whether there is a PO in the case we can use as third parties.) I have said that we are just getting started and need to collect and review materials, determine

the appropriateness of Mr. Shelly's deposition, and then, if appropriate, set a date after we have had time to adequately prepare him. Again, I haven't had a chance to collect and review what you have stated are many communications. If you are dissatisfied with these responses and believe you have enough to arbitrarily set a new deposition date, which I will oppose, that is your prerogative. But based on this record, it seems to me like textbook abuse of a non-party witness by a party who has sued the non-party in another court.

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From: Nolan, Michael <Michael.Nolan@huschblackwell.com>
Sent: Wednesday, June 28, 2023 4:34 PM
To: Cruse, William R. <william.cruse@blankrome.com>
Cc: Jensen, Jeff <Jeff.Jensen@huschblackwell.com>; Martinich-Sauter, Michael <Michael.Martinich-Sauter@huschblackwell.com>; Ottolini, Lisa <Lisa.Ottolini@huschblackwell.com>; Adeniran, Bola <Bola.Adeniran@huschblackwell.com>; May-Matthews, Christy <Christy.May-Matthews@huschblackwell.com>
Subject: RE: Shelly Subpoena in Pace-O-Matic v. Eckert Seamans

Will,
I just called and left a message. Often, I think conversations are more productive than e-mails. I was hoping to discuss the issues raised below before Friday. Contrary to your comment below, I have stated several times that I would be happy to speak with you. To date, you have made no attempt to call me. Please call me this afternoon. My cell is 314-550-6235 and my schedule is wide open.

We are more than happy to discuss the date of Mr. Shelly's deposition. However, we do need to set a new date and cannot agree to put that off until such time as you may deem the deposition to be "appropriate." He was served on June 13th and after initially agreeing to continue the noticed date of the deposition, I have been attempting to reschedule it with you for June 6 or 7, almost 4 weeks after he was served. To date, you still have not stated whether those dates will work for you and Mr. Shelly, nor have you proposed alternative dates.

We have noticed the deposition for Mr. Shelly's office to minimize any burden to him, but we are flexible in terms of location and would be more than happy to have it at your office if you would prefer.

You do not deny that Mr. Shelly has personal knowledge regarding the occurrences which are the subject of the lawsuit against Eckert. Nor have you identified any other reason why his deposition in this case would subject him to undue burden. If you have any *specific* concerns on that front, please let us know so that we can try to work through those issues to minimize any undue burden.

To the extent you believe my questions posed to Mr. Shelly during his deposition implicate privileged or protected information, then I would expect you to object and take whatever other actions you feel necessary. If you have any *specific* concerns on that front, please let me know so that we can try to work through that.

Your opinions regarding the timing and order of depositions in this case are not valid objections. Please call me as soon as possible so that we can discuss these issues. Otherwise, I will be forced to re-notice the deposition without your input.

Michael Nolan
Partner
Direct: 314-480-1770
Michael.Nolan@huschblackwell.com

From: Cruse, William R. <william.cruse@blankrome.com>
Sent: Wednesday, June 28, 2023 1:04 PM
To: Nolan, Michael <Michael.Nolan@huschblackwell.com>
Subject: RE: Shelly Subpoena in Pace-O-Matic v. Eckert Seamans

[EXTERNAL EMAIL]

Mike,

I asked to engage with you on concerns that are common in the context of subpoenas to non-parties, including concerns about disclosure of privileged or other protected matter, such as trade secret or other confidential or commercial information, and undue burden, all of which are encoded in Rule 45. You have not agreed to meet and confer and have, instead, sought to impose another set of unilaterally chosen deposition dates. The rules and related case law provide protections to nonparty deponents. In my very first email to you, I told you that we were looking into this matter and would need to discuss scope. Your withdrawal of the June 27 unilaterally imposed date was not a great “courtesy” to Mr. Shelly, as you imply in your email, it was a commonplace and commonsense thing to do when dealing with a non-party.

As I stated yesterday, we have serious concerns about your subpoena. Your client has sued Mr. Shelly in the Court of Common Pleas of Lycoming County. And in your client’s case against Eckert Seamans, only one party deposition has taken place, and that was of a relatively minor witness where the deposition lasted only a few hours. Your client has not deposed any of its adversaries, not Mr. Stewart, not Mr. Skjoldal, not Eckert Seamans itself, or any other of Eckert Seamans’ attorneys, staff, and agents. For you to assert that you must depose **immediately** a non-party, Mr. Shelly, when you have not conducted party depositions regarding the same facts with more than two months left in your fact discovery period raises serious concern about you pursuing Mr. Shelly’s deposition for an improper purpose.

We are looking into “the many written communications that have been produced” in your case regarding Mr. Shelly so that we can determine the propriety of your deposition request and adequately prepare him if we determine a deposition is, in fact, appropriate. We will work with you in good faith to discuss whether a deposition of Mr. Shelly is appropriate and, if so, whether certain limits and protections should be put in place. (For example, do you have a protective order in place?) I encourage you to work with us in good faith and cooperatively. Please answer my question below.

Will

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From: Nolan, Michael <Michael.Nolan@huschblackwell.com>
Sent: Tuesday, June 27, 2023 7:30 PM
To: Cruse, William R. <william.cruse@blankrome.com>
Cc: Jensen, Jeff <Jeff.Jensen@huschblackwell.com>; Martinich-Sauter, Michael <Michael.Martinich-Sauter@huschblackwell.com>; Ottolini, Lisa <Lisa.Ottolini@huschblackwell.com>; Adeniran, Bola <Bola.Adeniran@huschblackwell.com>; May-Matthews, Christy <Christy.May-Matthews@huschblackwell.com>
Subject: RE: Shelly Subpoena in Pace-O-Matic v. Eckert Seamans

Will,

As a courtesy to you and Mr. Shelly, I agreed to your request that we continue the date of his deposition. When I did so, I specifically asked you to confirm your availability for 6th or 7th of July. It has been over a week now and you still have not done so, despite that fact that I renewed by request a second time yesterday.

I'm happy to discuss the matter with you, however, we need to pick a date. Please confirm the 6th or 7th, so we can re-notice it and arrange for a court reporter, and I can make my travel arrangements.

Generally speaking, the scope of my examination of Mr. Shelly will be based on the allegations contained in our Second Amended Complaint. See attached. Mr. Shelly has personal knowledge of many of the communications and interactions which form the basis of POM's lawsuit against Eckert as evidenced by the many written communications that have been produced in this case by Eckert and third parties.

I have not yet drafted my examination outline and do not know the specific questions I will be asking him. Even if I had already done so, that information is protected by the attorney work product doctrine and I am not aware of any requirement that I share that information with you. My plan is to craft my questions so that they are reasonably calculated to lead to the discovery of admissible evidence. If you believe they call for privileged or protected material, then I am sure you will respond as you see fit.

Michael Nolan
Partner
Direct: 314-480-1770
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From: Cruse, William R. <william.cruse@blankrome.com>
Sent: Tuesday, June 27, 2023 1:34 PM
To: Nolan, Michael <Michael.Nolan@huschblackwell.com>
Subject: RE: Shelly Subpoena in Pace-O-Matic v. Eckert Seamans

[EXTERNAL EMAIL]

Dear Mike,

First, thank you for your patience. Second, before we agree to a date for Mr. Shelly's deposition, I would like to discuss with you the scope of your planned examination and several concerns we have about the propriety and need for Mr. Shelly's deposition. These concerns are all the more heightened by that fact that your client, Pace-O-Matic, or a subsidiary of your client, POM of Pennsylvania, has sued Mr. Shelly in the Lycoming County Court of Common Pleas. Fact discovery does not conclude in your case until August 31, 2023 and it may be extended further, so we have sufficient time to vet these issues together. **Please let me know if you have time available to start these discussions this coming Friday.**

Thank you,

Will

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From: Nolan, Michael <Michael.Nolan@huschblackwell.com>
Sent: Monday, June 26, 2023 5:19 PM
To: Cruse, William R. <william.cruse@blankrome.com>
Cc: Jensen, Jeff <Jeff.Jensen@huschblackwell.com>; Martinich-Sauter, Michael <Michael.Martinich-Sauter@huschblackwell.com>; Ottolini, Lisa <Lisa.Ottolini@huschblackwell.com>; Adeniran, Bola <Bola.Adeniran@huschblackwell.com>; Peter C. Buckley (pbuckley@foxrothschild.com) <pbuckley@foxrothschild.com>; Tintner, Robert S. <RTintner@foxrothschild.com>
Subject: RE: Shelly Subpoena in Pace-O-Matic v. Eckert Seamans

You don't often get email from michael.nolan@huschblackwell.com. [Learn why this is important](#)

Will,
I have not heard back from you. We would like to reschedule Mr. Shelly's deposition. Will July 6 or 7 work? Please let me know as soon as possible, so we can make arrangements. Also, please let me know if you want to discuss the location of the deposition. If not, we will re-notice it at Mr. Shelly's office in Harrisburg.

Michael Nolan
Partner
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From: Nolan, Michael
Sent: Monday, June 19, 2023 10:28 AM
To: Cruse, William R. <william.cruse@blankrome.com>
Cc: Jensen, Jeff <Jeff.Jensen@huschblackwell.com>; Martinich-Sauter, Michael <Michael.Martinich-Sauter@huschblackwell.com>; Ottolini, Lisa <Lisa.Ottolini@huschblackwell.com>; Adeniran, Bola <Bola.Adeniran@huschblackwell.com>; Peter C. Buckley (pbuckley@foxrothschild.com) <pbuckley@foxrothschild.com>; Tintner, Robert S. <RTintner@foxrothschild.com>
Subject: RE: Shelly Subpoena in Pace-O-Matic v. Eckert Seamans

Good morning Will. Yes, if June 27th doesn't work for you and Mr. Shelly, we can reschedule it to a date that works for us all. I'm copying Peter and Robert so that we can pick a date. How does July 6 or 7 look for you?

Michael Nolan
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Direct: 314-480-1770
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From: Cruse, William R. <william.cruse@blankrome.com>
Sent: Monday, June 19, 2023 7:22 AM
To: Nolan, Michael <Michael.Nolan@huschblackwell.com>
Subject: Shelly Subpoena in Pace-O-Matic v. Eckert Seamans

[EXTERNAL EMAIL]

Good morning Michael,

We have been retained to represent Mr. Shelly in response to the deposition subpoena he received in the matter *Pace-O-Matic, Inc. v. Eckert Seamans*. Given our recent retention, we need some time to get up to speed on this and related matters. Accordingly, we cannot produce Mr. Shelly on the date stated in the subpoena: Tuesday, June 27. Also, we would like to discuss the scope of your intended examination and whether any protections and limitations are needed. Please let us know some windows of time you have available later this week or next week to discuss. Last, please confirm by return email that the Tuesday, June 27 date is withdrawn and that the deposition will be rescheduled for a mutually convenient date.

Thank you,

Will

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